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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,767	11/04/2005	Eva-Maria Dusterhoft	0470-051057	2042

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EXAMINER

KRAUSE, ANDREW E

ART UNIT	PAPER NUMBER
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1781

MAIL DATE	DELIVERY MODE
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05/24/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/531,767	Applicant(s) DUSTERHOFT ET AL.	
	Examiner ANDREW KRAUSE	Art Unit 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/1/10 has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 17-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redding (US 6149953).

4. Nassu (Grassas y Aceites, 1999) is cited as evidence.

5. Claims 17-29: Redding discloses encapsulated bakery ingredients generally composed of functional core component encapsulated in a shell material (col. 1, lines 35-50). These encapsulated materials (secondary additives) are then added to typical bread dough ingredients such as flour, yeast and water (paragraph bridging columns 1 and 2). Example 2 uses encapsulated ascorbic acid at 140 ppm (0.014%) of a dough.

6. The secondary additives disclosed include acidulants such as ascorbic acid , as well as protease enzymes (col. 2, lines 6-16). An embodiment of the Redding invention utilizes an ascorbic acid core encapsulated in a coating so as to prevent the release of the ascorbic acid until the early stages of baking when it achieves its bread improving effect (col. 2 line 46-col 3 line 12).

7. The particles preferably have a shell thickness of up to 200-300 micrometers, with the ascorbic acid not exceeding half the thickness of the shell, that is, up to 100-150 micrometers (col. 7, lines 44-65).

8. The outer coating is comprised of a vegetable fats (for example hydrogenated cottonseed oil, examples) and may also include emulsifiers such as mono-glycerides (table 2, second section) in combinations so as to provide the melting point and release characteristics desired in a particular application (column 7, lines 6-11). One having ordinary skill in the art at the time of the invention would find it obvious to use, for example, a combination of vegetable fat such as hydrogenated cottonseed oil with in combination with mono-glycerides, as it is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). In

example 1, the coating layer is 100% of the triglyceride fat (cottonseed oil). However, Redding discloses the use of mixtures of shell materials in order to modify the release behavior of the encapsulated product (col. 7, lines 8-10). In using a combination of the triglyceride fat (cottonseed oil) and monoglycerides as above, it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the ratio of triglyceride fat: emulsifier from 100:0 as in the example to one utilizing a higher level of emulsifier in order to achieve the desired melting point and release characteristics of the composition (col. 7, lines 5-10) for the intended application, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

9. With respect to the properties of the fat, Nassu discloses the melting point of hydrogenated cottonseed oil (AGH) to be 38.4 C (Table 2). While the N profile is not disclosed, the hydrogenated cottonseed oil possesses similar melting properties to the hydrogenated fats disclosed in the specification. “Where...the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. Whether the rejection is based on “inherency” under 35 USC 102, on “prima facie obviousness” under 35 USC 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art products. See *In re*

Brown, 59 CCPA 1036, 459 F.2d 531, 173 USPQ 685 (1972).” *In re Best, Bolton and Shaw* 195 USPQ 430 (CCPA 1977).

10. With respect to claim 22, while Redding does not explicitly disclose the use of DATEM, it is well known in the art and frequently used interchangeably with mono and/or diglycerides (disclosed in Redding) and would require only the substitution of compounds known in the art for the same purpose.

11. Claims 30-31: Redding discloses the production of the granules by adding the functional ingredient into the liquid lipophilic component and cooling until the product granulates. While Redding does not explicitly disclose spray coating (claim 30) or atomizing the suspension of particles within the coating (claim 31) the skilled artisan would recognize each both the Redding granulation method and those claimed are well known encapsulation methods to one skilled in the art, and would be suitable for use interchangeably to achieve predictable results.

Response to Arguments

12. Applicant's arguments with respect to claims 17-31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien T Tran/
Primary Examiner, Art Unit 1781

/ANDREW KRAUSE/

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